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Andre Fikes, a sole proprietor, d/b/a Andre and Tony Painting, and its alter ego and successor, F & H Enterprises, Inc., d/b/a Andre and Tony Painting and International Brotherhood of Painters and Allied Trades, Local 119, AFL-CIO. Case 7-CA-34748

March 28, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND FOX

On May 18, 1994, the National Labor Relations Board issued an order adopting, in the absence of exceptions, the decision of the administrative law judge directing that the Respondent, Andre Fikes, a sole proprietor, d/b/a Andre and Tony Painting, and its alter ego and successor, F & H Enterprises, Inc., d/b/a Andre and Tony Painting, make whole the discriminatee, Richard Sniff, for any loss of pay or benefits resulting from the Respondent's unfair labor practices in violation of the National Labor Relations Act. On November 16, 1994, the U.S. Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on October 25, 1995, the Regional Director for Region 7 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Thereafter, on October 30, 1995, the Regional Director issued an erratum to the compliance specification. Although properly served with a copy of the compliance specification and erratum, the Respondent failed to file an answer.

By letter dated December 7, 1995, the Acting Regional Attorney advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by December 21, 1995, a Motion for Default Judgment would be filed. The Respondent filed no answer.

On February 27, 1996, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On March 1, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

320 NLRB No. 137

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due Richard Sniff is as stated in the compliance specification and we will order payment by the Respondent of the amount to the discriminatee, plus interest accrued on the amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Andre Fikes, a sole proprietor, d/b/a Andre and Tony Painting, and its alter ego and successor, F & H Enterprises, Inc., d/b/a Andre and Tony Painting, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall make whole Richard Sniff by paying him the following amount, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws: \$2980.

Dated, Washington, D.C. March 28, 1996

William B. Gould IV, Chairman

Margaret A. Browning, Member

Sarah M. Fox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD